TESTIMONY OF JOAN CLAYBROOK FOR ADVOCATES AND PUBLIC CITIZEN

Thank you, Mr. Chairman and members of the Subcommittee on Surface Transportation and Merchant Marine, for the opportunity to testify before you today on the urgent topic of improved transportation safety and security for the people of the United States. My name is Joan Claybrook, President of Public Citizen. Today, I am testifying on behalf of Public Citizen and Advocates for Highway and Auto Safety (Advocates). Advocates is a coalition of consumer, health, safety, law enforcement and insurance companies and organizations working together to reduce motor vehicle deaths and injuries on our highways. Both Public Citizen and Advocates have a long history of working with this committee on improving motor carrier safety.

The tragic events of September 11th have placed needed attention on the fact that a carefully forged intersection of security and safety needs in all modes of transportation is long overdue. This is particularly true in the arena of commercial transportation of freight and passengers by motor carriers. As a nation, we have been lax in adopting the kinds of stringent policies for safety oversight and approval of domestic motor carrier operations that would provide a ready basis for ensuring both the safety and security of people, cargo and institutions in the U.S. In large measure, many of these shortcomings in safety and security are the direct result of the chronic failures of the Federal Motor Carrier Safety Administration (FMCSA) to fulfill explicit Congressional mandates to conduct rulemaking and issue regulations in a timely manner that would improve federal and state safety oversight and provide important data on motor carrier operations.

In general, our current safety policies also make it too easy to gain motor carrier operating authority, too easy to obtain and keep a commercial driver's license (CDL), too easy to qualify for driving or transporting hazardous materials which can be used for terrorist actions against the U.S. Also, it is too easy to maintain anonymity about past driving records and motor carrier company operations. Data acquisition and retrieval at both the federal and state levels about past motor carrier operations and commercial driving records of the operators of trucks and buses is poor unreliable, or nonexistent despite the repeated direction by Congress to the U.S. Department of Transportation (DOT) and the states to quickly build sound data banks on company and driver safety performance, especially the records on safety oversight reviews, individual vehicle inspections, and traffic and criminal conviction records of drivers holding intrastate or interstate licenses for the operation of commercial motor vehicles. In fact, the FMCSA has failed to issue

dozens of safety standards mandated by Congress in seven different statutes since 1988 and is delinquent on almost another dozen. Clearly, Congress must demand immediate action by this agency and its new director, Mr. Cleggs.

These deficiencies in safety regulation can be readily exploited to pose security threats. Under existing regulations, a terrorist organization could set up a new trucking company in the U.S. or Mexico, and obtain operating authority in the U.S. for an 18 month period without any federal or state safety review or security check simply by paying a fee. Drivers for such a company could obtain CDLs and authority to transport hazardous materials essentially by taking written exams with only a minimal on-the-road test for safety proficiency, with no criminal background check or review for security purposes, and with only the most rudimentary check of the driver's prior three-year state driving record. After obtaining a hazardous materials endorsement in addition to their CDL, these drivers can legally drive semi-trailers carrying up to 80,000 pounds of placarded hazardous materials on nearly all roads and through all cities in the U.S. These materials include common, deadly gases like ammonia, chlorine, arsine, and phosphine, which if released would form a cloud that would cling close to the ground and cover as many as 40 square miles.

The potential danger from hazardous materials is enormous because of the huge amounts transported on a daily basis. According to the most recent figures published by DOT, in 1998 there were an estimated 800,000 daily hazardous materials shipments in the U.S., constituting over 3 billion tons of hazardous materials shipped annually. *The Changing Face of Transportation*, U.S. DOT (2000). Since there is no adequate state or national reporting hazardous materials system, these figures are derived from indirect sources and most likely represent a gross under reporting of total hazardous materials shipments and tonnage. DOT also reported that in 1997 over one-quarter (28.4 percent) of all hazardous materials was transported by truck. *Id.* Likewise, the vast majority (86 percent) of the more than 14,000 annual hazardous materials incidents reported each year between 1993 and 1997 involved highway vehicles, *i.e.*, trucks. *Transportation Statistics Annual Report 1999*, U.S. DOT (1999). Again, due to the inadequacies of the hazardous materials incident reporting system, these figures significantly underreport actual incidents. Thus, shortcomings in motor carrier safety regulations have particular importance with respect to the transportation of hazardous materials.

These serious shortcomings are magnified by even more severe deficiencies at our shared foreign borders with Canada and Mexico. The pending FY 2002 DOT Appropriations bill (H.R. 2299), as passed by the Senate, goes a long way towards imposing more stringent safety controls at our southern border which will naturally assist and improve security

procedures. Nevertheless, Congress should consider strengthening several provisions of the legislation which may still allow for abuse and exploitation by Mexico-domiciled motor carriers. In addition, some of the provisions authored by Senator Murray (D-WA) and Senator Shelby (R-AL) directed at improving the southern border, with appropriate strengthening, may also be necessary to consider for application to our northern border with Canada.

DOMESTIC MOTOR CARRIER SAFETY AND SECURITY DEFICIENCIES

Chronic deficiencies in motor carrier law, regulation, and safety oversight practices simultaneously erode both highway safety and domestic security needs in the U.S. In most cases, these shortcomings are the result of a persistent failure to act on the part of the Federal Motor Carrier Safety Administration (FMCSA) in response to Congressional directives which, in some instances, stretch back to the late 1980s. Many important safety regulations have not been adopted despite Congressional timetables. These rules, if issued, would provide a solid trunk on which to graft the branches of U.S. security policies in critical areas of need. The following is a brief review of some of the major issues which affect both motor carrier safety and security in the U.S.

Defects In the Current Commercial Driver License (CDL) Program Permit Abuses

It is far too easy to obtain a CDL in the U.S. No training or prior certification of any kind is needed to apply for and obtain a license to operate a truck or bus in interstate commerce. It is even easier in most states to obtain a license to operate a truck or bus solely intrastate. In fact, in some states a chauffeur's license or, in some instances, even an ordinary passenger vehicle operator's license, is sufficient to operate a smaller commercial motor vehicle for hire. Moreover, a not-for-hire rental even of a tractor-trailer is possible in a number of states without having any kind of CDL.

Testing for a CDL requires no instruction and many applicants are self-taught, have prepped with the aid of mail-order courses, or have been given a few lessons by a truck or bus driver they know. No certification of any kind, such as the demonstration of having passed a federally-approved training course, has to be presented to take a multiple choice paper examination for the basic interstate CDL. The driving part of the test is often brief and perfunctory. Many drivers admit that they learn how to operate a truck only through their employment experience. This results in inexperienced drivers when they first take to the road carrying freight throughout the U.S.

Special endorsements, such as the additional authorization to haul placardable

quantities of hazardous materials, are, again, simply "knowledge" tests. The applicant does not need to demonstrate any driving skills, but only answer a set of written questions about hazardous materials transport.

Another key shortcoming of the federal CDL rules is the lack of a requirement for a commercial license for drivers operating trucks less than 26,001 pounds gross vehicle weight. There are millions of single-unit trucks weighing between 10,001 and 26,000 pounds operating in interstate commerce with drivers who have no CDLs, are not subject to mandatory drug and alcohol testing, and for whom the states often have patchy, unreliable driver records of traffic and other violations and convictions.

The time has come for the U.S. DOT to place more rigorous requirements on the ability to obtain and renew a CDL. Specifically, Advocates and Public Citizen support extending the CDL requirement to vehicles weighing between 10,001 and 26,000 pounds. This action would trigger the application of the same data collection requirements for larger truck commercial license holders which are currently in development pursuant to Congressional direction in both the Transportation Equity Act for the Twenty-First Century of 1998 (TEA-21) and the Motor Carrier Safety Improvement Act of 1999 (MCSIA).

Let me turn now to other areas of safety oversight which directly affect the kind of information and approval procedures that are needed to increase the safety and security of the American people.

Both Safety and Security Needs Require the Use of a Commercial Driver Unique Identifier

Advocates and Public Citizen believe that there is a crucial, unmet need for absolutely secure, reliable, continuing identification of drivers to prevent unauthorized, illegal uses of the interstate CDL. A question lurking in the background is whether such a unique identifier ought also to be required even for licenses allowing intrastate-only commercial motor vehicle transportation. The Truck and Bus Safety and Regulatory Reform Act of 1988 directed the Secretary to issue regulations not later than December 31, 1990, establishing minimum uniform standards for a biometric identification system to ensure the identity of commercial drivers operating vehicles weighing more than 26,000 pounds. In 1998, Congress subsequently amended the requirement in TEA-21 to remove the mandate that commercial drivers specifically shall have biometric identifiers and substituted the requirement that CDLs contain some form of unique identifier after January 1, 2001, to minimize fraud and illegal duplication. The Secretary was directed to complete

regulations on this new legislative mandate by December 9, 1998 (180 days after enactment). However, there has been no action on this issue and the agency lists it as "Next Action Undetermined" in its latest semi-annual regulatory agenda.

The Previous Employment Records and Safety Performance History of New Commercial Drivers Are Still Not Being Provided to Employers

The Hazardous Materials Transportation Authorization Act of 1994, directed the DOT Secretary to specify the minimum safety information that new or prospective employers must seek from former employers during the investigation of a driver's employment record. However, the FMCSA has issued only a notice of proposed rulemaking in 1996 and Congress, in the 1998 TEA-21, gave the provision a new statutory deadline of January 1999. Congress also modified the rulemaking charge to the Secretary to include protection for commercial driver privacy and to establish procedures for the review, correction, and rebuttal of inaccurate records on any commercial driver. The new TEA-21 provision went so far as to also protect previous employers against liability for revealing safety performance records in accordance with the regulations issued by the Secretary.

Unfortunately, this crucial regulation which has both major safety and security applications has received no further rulemaking action since 1996, and the FMCSA has missed the deadline for completing rulemaking by almost two years. In addition, many trucking companies have demonstrated an unwillingness to supply such information even under a "hold harmless" provision in federal law. The FMCSA should immediately issue a final rule to require that prospective employers request such information and that previous employers transmit that information under penalties for refusal. A collateral issue is whether revelation of any services problem posing a threat to others should be shared with all enforcement and security oversight authorities after the individual has the opportunity to rebut any accusations. In light of recent events, and the published reports that alleged terrorists sought to obtain CDLs and hazardous materials endorsements, criminal background checks for CDL applicants, and additional, appropriate security investigation of CDL holders who seek hazardous materials endorsement, should be required as part of the FMCSA final rule.

Performance-Based Commercial Driver License Testing and Training Would Provide Important Data on Operator History, Qualifications, and Competence

TEA-21 required the Secretary to complete not later than one year following enactment of the bill, that is, by June 9, 2000, a review of the procedures established and implemented by the states pursuant to federal law governing the CDL to determine if the current system for testing is an accurate measure of an applicant's knowledge and skills. The review also required the FMCSA to identify methods of improving testing and licensing standards, including the benefits of a graduated licensing system (allowing for expanded driving privileges over time). A notice proposing an information survey was published in the Federal Register on July 19, 1999. However, the review mandated by Congress to be completed more than a year ago remains undone and there has been no further published action on the graduated licensing survey.

Advocates and Public Citizen believe that this issue has important security implications for the safety of the American people. As indicated earlier in this testimony, applicants can easily take a CDL test in many states with no required instruction and little actual driving experience, pass the test, and be awarded a CDL for unrestricted truck operation in interstate commerce. We are strong supporters of mandatory driver entry-level and special endorsement training to secure a CDL, to transport of hazardous materials, and to operate Longer Combination Vehicles and school buses. We believe that drivers should not only receive federally-required training, but also undergo lengthy periods of restricted driving privileges to determine their safety and competence. A graduated licensing program with mandatory training certification from recognized, federally-approved driver training institutions as a prerequisite for gaining a CDL not only would provide for better, safer drivers, but it also would provide sustained information on every CDL candidate at each stage of training, certification, and graduated licensing.

Serious Offenses by Commercial Drivers in Non-Commercial Motor Vehicles Need To Be Recorded and Accessed By Enforcement Authorities

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) directs the Secretary to issue regulations by December 9, 2000, providing for the disqualification of an applicant for a CDL if the driver has been convicted of a serious offense in a non-commercial motor vehicle resulting in license revocation, cancellation, or suspension, and of a drug or alcohol offense involving a non-commercial motor vehicle. The FAA was long chastised for not enacting similar rules for pilots as well. The final regulation must specify the minimum disqualification period.

A notice of proposed rulemaking was issued on May 4, 2001. A final rule on this mandate is now more than nine months overdue. In combination with current state practices

that mask or expunge driver violations after only a few years which under this statutory requirement would disqualify a commercial driver, driver conviction records for CDL holders are patchy and incomplete. Most states maintain official driving records for only three years and many states regularly mask or expunge a commercial driver's record for convictions which otherwise would have triggered CDL suspension or disqualification. Having complete, long-term records of commercial driver violations in both commercial and non-commercial vehicles would provide necessary information about serious offenses, including criminal offenses, committed by current or potential CDL holders or about applicants who previously had CDLs that they allowed to expire for a time without immediate renewal.

There Currently are No New Motor Carrier Entrant Requirements that Test a Company's Safety Proficiency and Fitness to Carry Freight or Passengers

As was pointed out in the beginning of this testimony, it is far too easy for carriers to apply for and be granted interstate operating authority to haul freight and passengers in the U.S. The Secretary is directed in the MCSIA of December 1999 to require through regulation that each owner and each operator granted new operating authority shall undergo a safety review within the first 18 months after the owner or operator begins motor carrier operations. This timeframe for evaluating the safety of all new motor carriers is triggered by a requirement for the Secretary to initiate rulemaking to establish minimum requirements for applicant motor carriers, including foreign motor carriers, to ensure their knowledge of federal safety standards. The Secretary is also directed to consider requiring a safety proficiency examination for motor carriers applying for interstate operating authority.

The FMCSA has continued since enactment of the MCSIA in December 1999 to award new operating authority to applicant motor carriers without any safety fitness evaluations. Also, there has been no rulemaking to establish minimum requirements for new entrants to demonstrate their safety knowledge and no public consideration of the need for a safety proficiency test. The FMCSA, however, has proposed the 18-month safety review for Mexico-domiciled motor carriers in its proposed rulemaking of May 3, 2001, to implement the North American Free Trade Agreement. The requirements for domestic new carriers should be no less than for Mexican new entrants.

Essentially, motor carriers can presently gain domestic operating authority without any evaluation of the operating history of the company, of the drivers in the company's

employ, or the quality of its safety management and equipment. Only the payment of federal fees is necessary. The key question here is whether evaluation of the company and its safety practices should occur after it already has operated for up to a year and a half, or whether a safety fitness evaluation and other information which also could have security value should be a threshold requirement before any award of operating authority is granted.

The Murray-Shelby provisions included in H.R. 2299, now in conference, would require both initial and subsequent safety evaluation of foreign carriers to ensure that they have adopted adequate safety practices before they are even allowed to operate on U.S. roads. Advocates and Public Citizen believe that Congress should consider requiring an initial safety evaluation of domestic carriers as well, including successful performance on a safety proficiency examination, as a basis for considering awards of conditional operating authority. Permanent operating authority should be made contingent upon a subsequent acceptable onsite safety review after a year-and-a-half of operating under an award of temporary operating authority.

In this regard, we believe that, at a minimum, the prior history of a company which may have been previously incorporated but went out of business should be investigated at the time that an application for operating authority is submitted. Moreover, a preliminary safety evaluation of the company and its drivers should be accomplished before temporary operating authority is granted for a maximum of a year and a half. Following that period, a second, complete safety fitness review should be performed to determine if the company should be awarded permanent operating authority. Also, a safety proficiency test should be mandatory at the time of initial operating authority application. All of these prudent and reasonable actions were directed by Congress but continue to languish at FMCSA. If the agency would implement these rules, both the safety and the security of motor carrier operators would be significantly improved.

Exempted Quantities of Highway Transported Hazardous Materials are Too Generous and Could be Used to Harm the United States

The Research and Special Programs Administration (RSPA), a modal administration within U.S. DOT, issued a final rule in January 1997 conforming most intrastate shipper and carrier hazardous materials transportation to the federal Hazardous Materials Regulations. This action was directed by Congress in the Hazardous Materials Uniform Transportation Safety Act of 1990. However, RSPA adopted broad exemptions in its final regulation to respond to concerns about the burdens of hazardous materials transportation compliance for intrastate agricultural interests, especially for farmers. We believe that these exemptions, whatever their merit when first adopted, need Congressional review to determine if they require modification. Let me cite some of the reasons.

In its final rule, RSPA provided extensive exemptions for agricultural motor carrier hazardous materials transport, including waivers of requirements for shipping papers, placarding, emergency telephone numbers, and hazardous materials training for motor vehicle transport of hazardous materials within 150 miles of a farm. Moreover, specific exemptions were also granted in the rule for intrastate-only transportation by farmers of maximum quantities of certain hazardous materials, including 16,094 pounds of ammonium nitrate fertilizer in bulk packaging, 502 gallons of certain liquids or gases, and 5,070 pounds of other kinds of agricultural products. Other exemptions were permitted for small quantities of what are often flammable fuels and gases, or toxic chemicals, as incidental "materials of trade" used in the course of daily business. RSPA also allowed non-specification cargo tanks and bulk packaging of certain weights to be exempted from federal

requirements governing hazardous materials transport in order to reduce economic burdens. In order to further reduce such burdens, RSPA permitted, without restrictions, additional packaging exemptions to be enacted at the discretion of the states and issued a further notice delaying the effective date of compliance from July to October 1998 to facilitate state legislative action to enact such exemptions.

It is necessary to re-examine these exemptions from hazardous materials transportation requirements, including the maximum permitted amounts of hazardous materials and "materials of trade" which both directly and indirectly can be used to inflict damage at specific targets in the U.S. If you recall, about 4,000 pounds of ammonium nitrate fertilizer was used to destroy the federal building in Oklahoma City. This is only one-quarter the maximum amount currently exempted under RSPA regulation. Not only are these items susceptible to being used as weapons against people and institutions, but the data system at the state levels for documenting the purchase and movement of these hazardous materials by highway is exceedingly poor and unreliable.

The FMCSA has Failed to Implement a Congressionally Mandated Safety Fitness Permit for the Transportation of Certain Hazardous Materials

In this connection, I would also like to point out that the same 1990 federal hazardous materials legislation directs the Secretary to adopt stronger federal motor carrier safety permit regulations for motor carriers transporting Class A or B explosives, liquefied natural gases, hazardous materials that are extremely toxic upon inhalation, or highway route-controlled radioactive materials in both intrastate and interstate commerce. Most importantly, the law allowed permits to be granted only on the basis of a carrier successfully completing a safety fitness finding for carrying these hazardous materials. A less than "Satisfactory" rating on the safety test would automatically result in the denial of the permit application. Implementation of the permit program would also produce a reliable data bank of information on the operations of motor carriers transporting these specific hazardous materials.

The deadline for final regulations was November 16, 1991. A notice of proposed rulemaking was issued on June 17, 1993, but the FMCSA has since taken no further action. The topic is listed in the agency's most recent semi-annual regulatory agenda (May 14, 2001) as "Next Action Undetermined." This long overdue rulemaking needs to be completed expeditiously to ensure that a hazardous materials safety fitness requirement weeds out motor carriers that are unable to comply with the important federal requirements for safely transporting the specific

hazardous materials specified in the 1990 legislation. Congress should re-examine whether the list of what are considered "high-risk" hazardous materials should be expanded to include other hazardous materials, especially those which might be used to threaten or harm Americans.

Furthermore, Advocates is convinced that appropriate regulation of hazardous materials transportation should include a requirement that hazardous materials carriage must be limited to trucks equipped with Global Positioning System (GPS) technology that permits real-time location tracking of hazardous materials loads. Moreover, holders of CDLs with a hazardous materials endorsement should have biometric identifiers and be required to use computerized smart cards in order to access and operate vehicles carrying hazardous materials.

In addition, current routing regulations for non-radioactive hazardous materials highway transportation are too sketchy and inadequate. The federal requirements do not require states even to have highway routing criteria for non-radioactive hazardous materials and they continue to allow loads of hazardous materials to be transported on most roads and through major metropolitan areas across the nation regardless of population or traffic density. In fact, the burdens imposed on the states by the Federal Highway Administration to justify alternative, diversionary routes for public and environmental protection have a chilling effect on the willingness of state and local public authorities to tell trucking concerns hauling hazardous materials to use longer, safer routes. Congress should place much tighter restrictions on the routing of hazardous materials transported by trucks and direct the states, pursuant to Congressionally directed federal regulations, to ensure uniform action throughout the nation, to adopt safer alternate routings for certain kinds of hazardous materials which will lower the risks of spills or of terrorist actions which can adversely affect sensitive environmental areas and dense population centers.

A National Uniform System of Permits for Hazardous materials Carriers is Urgently Needed to Enhance Safety and to Improve Reporting and Data Collection

The Hazardous Materials Transportation Uniform Safety Act of 1990 directed the Secretary to institute a nationally uniform system of permits necessary for motor carrier transport of hazardous materials. The date of the final regulation was linked by Congress to a report of a working group on what actions were needed to accomplish this. The group, however, issued its recommendations two-and-one-half years late on March 15, 1996, which was more than five years ago.

Despite the fact that the report documents widespread defects in state

permitting practices that directly affect the safety of and data on hazardous materials movements by motor vehicle, two notices reviewing the report have been issued to date, in 1996 and in 1998, without any indication of agency willingness to institute the uniform permitting system directed by law 11 years ago. No further action has been taken by the FMCSA to date. It is clear from an examination of the report that there is no reliable national database of information about the number of hazardous materials shipments, the quantity of what is transported, its nature, or its exact origins and destinations. State permitting practices do not currently keep complete, long-term records accurately indicating these and other facets of hazardous materials transportation. The national uniform permitting system is long overdue for implementation by DOT. Congress should consider the need to place more stringent data collection and retrieval requirements on intrastate-only highway transport of hazardous materials, especially any continuing exemptions for certain quantities of specific materials.

Data Systems Identifying Motor Carriers and Drivers at Both the State and Federal Levels are Unreliable and Incomplete

Congress has recognized in both TEA-21 and in the Motor Carrier Management Information System (MCMIS) that motor carrier data systems are incomplete and inadequately linked among states, and between the states and the federal government. Timely, accurate information on motor carriers, including inspection results, Out of Service Orders, carrier and driver violations either do not exist in many cases or cannot be retrieved quickly by one state from another state.

Congress may want to consider accelerating the program of data collection and analysis improvements that it called for in Section 225 of the MCMIS. The advent of a central data repository with rapid access by both safety oversight and security authorities is crucial to protecting the welfare of the American people. Currently, the legislation calls for primary responsibility in setting up the state system of data collection and reporting, and communication of those data to the federal government, to be vested in the National Highway Traffic Safety Administration (NHTSA). Although NHTSA is very knowledgeable about the creation and operations of data systems, current resources at the agency and the amount of funding originally authorized in Section 225 may not enable rapid development and implementation of the data system. The provision presently has no timeline for putting the data system in place. Advocates believes that a deadline is necessary for getting the system up and running, and that $5 million each year is not sufficient for ensuring rapid acceleration and implementation.

BORDER COMMERCIAL TRANSPORTATION SAFETY AND SECURITY

Advocates and Public Citizen believe that U.S. cross-border motor carrier freight and passenger transportation must be subjected to a far higher level of intense, detailed security oversight to ensure U.S. domestic safety against potential terrorist threats. Implementing enhanced border security oversight simultaneously involves onsite motor carrier fitness evaluation. There is no bright line separating motor carrier security concerns from safety issues.

Motor Carrier Safety Fitness and Driver Checks Proposed in H.R. 2299 Should Apply to Mexico-Domiciled Carriers Only Operating Within the Border Zone

It is crucially important that the pending Murray-Shelby provisions in H.R. 2299, requiring more rigorous motor carrier safety evaluations, be enacted into law as soon as possible. The Murray-Shelby provisions provide for full safety reviews performed on-site for all Mexican carriers applying to operate beyond the border commercial zones, with a required finding of "Satisfactory" before conditional authority is granted and again before granting permanent authority. This avoids the pitfalls of the current FMCSA proposed rules which require only paper applications to determine whether a Mexico-domiciled motor carrier is granted operating authority without any actual on-site safety evaluation.

However, this section as well as others in the bill apply a number of important safety requirements with security implications only to Mexican carriers operating beyond the current commercial zones. Without on-site safety reviews for all Mexico-domiciled carriers, it is impossible for safety and security authorities to determine the legitimacy of the companies applying for commercial zone-only operating authority.

For example, another section of the Murray-Shelby provisions requires electronic verification of every Mexico-domiciled motor carrier driver's license status and validity at border crossing points, but only for carriers operating beyond the border zone. Congress should extend this policy and practice to cover all foreign drivers of all Mexico-domiciled carriers crossing into the U.S. Additionally, much more careful coordination and verification of licensure is needed with the government of Mexico to validate a driver's Licencia Federal de Conductor before a driver attempts to cross into the U.S. Advocates and Public Citizen are concerned with drivers presenting at border checkpoints fraudulent Mexican licenses that have been forged or exchanged. The U.S. should also work with the

Mexican government to adopt for Mexican licenses an unambiguous driver identifier, such as a biometric identifier, to ensure license validity and non-exchangeability. In addition, insurance coverage should be verified at the border.

There are other examples of requirements in the Senate-passed DOT Appropriations bill dealing with motor carrier inspection and driver checks that Congress may want to consider extending to Mexico-domiciled carriers operating only within the border zone. These include the Commercial Vehicle Safety Alliance (CVSA) decal, the requirement for a distinctive registration number of Mexican motor carriers, and the U.S. insurance requirement. Right now, these provisions apply only to those Mexico-domiciled carriers that will operate outside the border zone.

Congress Should Consider Directing the FMCSA to Rescind Operating Authority of Foreign Motor Carriers that Have Serious Safety Violations

Congress should also strengthen the Murray-Shelby provisions to require that certain specified, serious violations involving dangerous or illegal operations by a foreign motor carrier will result in a lifetime exclusion from grants of U.S. operating authority. For example, transporting undeclared, highly toxic, radioactive, or explosive hazardous materials, using drivers with no valid Mexican driver licenses, or transporting hazardous materials or passengers without insurance could be regarded as violations so serious as to bar a company for life from operating in the U.S. A difficulty with enforcing such a prohibition, of course, is that a company may dissolve but re-incorporate with essentially the same managers, practices, and drivers as before and begin to engage in the same abuses that triggered the original ban on its operating authority.

These recommendations are the minimum steps necessary to gain uniformity in coverage of Mexico-domiciled motor carriers. They will ensure improved data gathering and verification procedures for both enhanced safety and security of Mexico-domiciled motor carriers. Furthermore, measures such as those addressing driver license validation and unique driver identifiers, may also be necessary to implement at our northern border with Canada.

Foreign Motor Carrier Transportation of Hazardous Materials is Poorly Enforced and Oversight By Federal Authorities Must Be Strengthened

Let me know turn to a pressing issue of public safety and security that Congress may need to evaluate in depth. Strengthened safety and security measures

are especially imperative in the area of hazardous materials transportation across both our northern and southern borders. Unfortunately, we have systemic weaknesses in our oversight and control of hazardous materials movements across our borders.

It has been well-documented for many years that Mexico-domiciled motor carriers chronically fail to adhere to U.S. hazardous materials transportation regulations with regard to proper containerization, shipping papers accurately portraying the materials being hauled, and correct display of required placards. Also, Mexico-domiciled carriers repeatedly attempt to transport hazardous materials that cannot be brought into the U.S. by truck or cannot be legally disposed of here. According to information from the Commercial Vehicle Safety Alliance, the FMCSA, and the U.S. General Accounting Office, past inspections at the U.S. southern border have shown that the overwhelming majority of Mexico-domiciled carriers are not complying with Environmental Protection Agency, RSPA, and FMCSA requirements for transportation of approved hazardous materials in the border zone. Also, any hazardous materials carriers which appear to have proper shipping papers and placards are often waved through border check points without inspectors actually verifying that the materials on board match shipping papers or external placards, or that there is not other, illegal hazardous materials or contraband being transported.

This is especially worrisome because the proposed FMCSA paper certifications do not require Mexico-domiciled motor carriers to demonstrate that they are knowledgeable about, and actually able to comply with, U.S. hazardous materials regulations. At no point in the proposed application process does a Mexico-domiciled carrier have to attest that it intends to carry hazardous materials. If, subsequent to a grant of temporary operating authority, a carrier decides to transport hazardous materials, nothing compels the carrier to reveal that fact right away.

Moreover, the application process has no requirement that the carrier, if subsequent to a grant of operating authority begins to carry hazardous materials, immediately notify the FMCSA to demonstrate its knowledge of the considerably more demanding requirements for doing so. This is a major safety and security shortcoming in the application process. Advocates and Public Citizen also point out that if a foreign motor carrier registers with the RSPA to carry hazardous materials, as is currently required, the form is used only for the purpose of collecting federal hazardous materials transportation fees – it does not ask for any demonstration by a carrier that it is knowledgeable about the requirements for, or is proficient in, the safe transport by highway of hazardous materials. In addition, this registration with

the RSPA is not sent to the FMCSA.

This means that the FMCSA can become aware of a carrier's decision to carry hazardous materials only when: (1) the foreign carrier has one or more of its trucks undergo inspections; (2) the carrier undergoes a later safety compliance review which, for new entrants, can be up to 18 months following an initial award of operating authority; or, (3) the foreign carrier files an updated MCS-150 carrier census form every two years, a requirement only recently adopted by the FMCSA.

As for the last mentioned action, acknowledging hazardous materials transportation on a census form only flags the agency of the bare-bones fact that the carrier now transports hazardous materials. The acknowledgement does nothing more than simply note a change in services. Even then, there is no requirement directing the foreign carrier separately to demonstrate its proficiency in and knowledge of the safety requirements for transporting hazardous materials. It is therefore crucial that at the initial point of contact with a Mexico-domiciled motor carrier applying for U.S. operating authority (*i.e.*, the preliminary on-site safety evaluation called for in the Murray-Shelby provisions in H.R. 2299), each applicant carrier attest to its intention to carry hazardous materials and demonstrate its proficiency in understanding and applying U.S. laws and regulations packaging and transporting hazardous materials. In addition, any motor carrier deciding to transport hazardous materials after an initial award of temporary operating authority or a final award after the 18-month probationary period, must be required to re-apply immediately for a new award of operating authority.

If such a carrier fails to make such an application and is found to be transporting hazardous materials without specific operating authority to do so, its rights to operate in the U.S. should be immediately terminated and it should be penalized. A renewed award of operating authority should be contingent upon satisfactory testing of a carrier's proficiency in safely transporting hazardous materials and a full inspection of its facilities, equipment, drivers, and management practices for transporting legal hazardous materials in the U.S. These requirements should be made part of the completed rulemaking by the Federal Highway Administration to implement the hazardous materials federal safety permit system originally directed by Congress in the Hazardous Materials Transportation Uniform Safety Act of 1990.

I would like to emphasize again that many of these considerations for improved safety and security should be scrutinized for application to Canadian motor carriers as well.

Mexico and Canada Must Share Inspection and Security Oversight Responsibilities

It is clear that most of the security oversight apparatus that needs to be implemented at our borders, including personnel, procedures, and facilities, naturally interface with motor carrier safety oversight actions. Both facilities and personnel can share certain surveillance and safety oversight responsibilities that often will simultaneously provide both security risk appraisal and safety evaluation of motor carrier cross-border traffic. This points up the unarguable need for the rapid construction and operation of fixed inspection stations at every U.S. border crossing point both in Mexico and in Canada as well in order to conduct full (Level 1) inspections and detailed security checks. Also, it is obvious that the criticisms of both the U.S. Department of Transportation Office of the Inspector General and the U.S. General Accounting Office about the lack of motor carrier inspectors being on-duty at most border crossing points during all hours of open border point operation have to be met with quick action to ensure that no truck or bus comes across our border without being inspected both by Customs officials and motor carrier safety inspectors.

I also would like to emphasize here in closing that the task of simultaneously improving both safety and security at our borders and inside the U.S. cannot be a unilateral task undertaken only by the U.S. Foreign governments sharing borders with the U.S. need to dramatically strengthen their systems of validating the motor carriers and commercial drivers incorporated and licensed in Canada and Mexico both to guarantee their safety fitness and to ensure that freight and drivers that are found to be security risks are not granted permission to conduct motor carrier operations. To date, the government of Mexico, in particular, has chronically failed to hold up its end of the bargain in establishing its own demanding safety approval regime to ensure that only safe commercial vehicles and drivers reach our southern border asking for entry into the U.S.

The Dangers of Nuclear Waste Transportation Must be Addressed

On September 12, Energy Secretary Abraham suspended Department of Energy nuclear shipments, acknowledging that radiological shipments are potential terrorist targets.

If the proposal for a geologic repository at Yucca Mountain, Nevada moves forward, a large number of commercial nuclear waste shipments will take place over a period of approximately 30 years, constituting the largest nuclear waste

transportation project in history. The shipments would number between 30,000 and 100,000, depending on if the mode of transportation is road or rail.[1] Because a rail line to the site does not exist and the cost of building it would be approximately 1 billion dollars, it is likely that the casks will travel by highway, necessitating the larger number of shipments. Although the Department of Energy (DOE) has not released the exact transportation routes, studies by the State of Nevada and the DOE disclose that 43 states would be directly impacted.

A report by DOE showed that 109 communities with populations over 100,000 would be affected by shipments, increasing the threat of a terrorist attack in an urban setting.[2] Also, as part of the 1986 Environmental Assessment for the Yucca Mountain repository site, the DOE conducted a study that found that a severe accident in a rural area involving a high-speed impact would be devastating. They calculate that it would be difficult to fight fire involving fuel oxidation that would contaminate a 42-square-mile area, require 462 days to clean up and cost $620 million.

In reality, because the transportation casks have never had full-scale testing, no one knows the true consequences of an accident or attack. The Nuclear Regulatory Commission (NRC) sponsored a study in 1987 by the Lawrence Livermore National Laboratories. This study, commonly referred to as the "Modal Study," used computer modeling to predict cask responses to accident conditions. The study was inadequate and the conditions that were used in the computer analysis did not represent real-life scenarios.[3]

The NRC is planning to update the 1987 spent fuel transportation study. This study should fully explore the risk associated with different types of potential attacks, including high-impact accidents involving various types of fuel. As the state of Nevada told the NRC in 1998, "It is imperative that the Commission factor into its regulations the changing nature of threats posed by domestic terrorists, the increased availability of advanced weaponry and the greater vulnerability of larger shipping casks traveling across the country."

In March 2000, the NRC released a study prepared by Sandia National Laboratory, "Reexamination of Spent Fuel Shipment Risk Estimates," that updates the baseline 1977 study on radioactive material transports. The report is very

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[1] "Risky Transit- The Federal Government's Risky and Unnecessary Plan to Ship Spent Nuclear Fuel and Highly Radioactive Waste on the Nation's Highways and Railroads," A report by the Nevada Agency for Nuclear Projects found at http://www.state.nv.us/nucwaste/news2001/nn11313.pdf (10-05-01).

[2] "Nevada Potential Repository Preliminary Transportation Strategy Study 2," TRW Environmental Safety Systems, Inc (DOE's management and operations contractor for Yucca Mountain project), February 1996.

[3] "Shipping Container Response to Severe Highway and Railway Accident Conditions," prepared by Lawrence Livermore Laboratory in 1987.

optimistic about the risk for nuclear accidents and says that the older study overstates the potential risk. However, the new report does not even discuss risks associated with some type of terrorist attack on a nuclear shipment and it underestimates accident probability and consequences. Sandia also prepared this report without permitting stakeholder comments on the draft.

In short, to assure the safety and security of the public, Congress should instruct the DOE and the NRC to take account of all potential risks and their full consequences in evaluating and regulating the transport of nuclear waste.

THE IMPACT ON FIREFIGHTERS AND POLICE OF MOTOR CARRIER SAFETY AND SECURITY DEFICIENCIES

Finally, Mr. Chairman, we want to say a word about the firefighters and police who must deal with safety and security problems. The world now knows the enormous sacrifice these brave individuals make when disasters occur because of their incredibly brave response in New York and the terrible deaths and injuries they suffered. What the public may not know is that this kind of personal sacrifice occurs every day all over the United States in large communities and small. But the cost and burden on our state and local officials to respond to emergencies involving individuals intent on causing harm or with access to hazardous materials must be considered as the Congress and the Department of Transportation makes decisions about what precautions to require in granting operating authority in the United States and at the border, in driver licensing, in hazardous materials permitting, and in the imposition of penalties to deter future misbehavior. Often times these individuals, many of whom are volunteers, do not receive adequate training to cope with these sorts of emergencies. Moreover, many of the departments are understaffed and lack adequate equipment for coping with an accident involving hazardous materials. Finally, they are put at greater peril when the vehicles they are dealing with have not been properly placarded. If we take precautions to prevent the problems we are discussing today, our fire fighters and police will be exposed to far less personal and unnecessary risk, as of course will the public. Often when these risks occur one by one across the country and not in one massive tragedy, they escape public and press attention and, unfortunately, government willingness to be the federal cop on the regulatory beat, fully enforcing the law. As you consider your responsibilities in preventing future tragedies, be they large disasters or affecting a small number of people each day, we urge you to remember that 5.300 Americans are killed each year by large trucks on our highways, and that without strong safety and security measures that we know should be adopted, we are inviting terrorists and short-sighted

individuals to wreck harm on innocent people.

That completes my testimony. I am prepared to respond to any questions that you or other members of the subcommittee may have.